ORGANIZATION FOR THE PROTECTION AND ADVANCEMENT OF SMALL TELEPHONE COMPANIES

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ORIGINAL
FILE

November 9, 1992

Ms. Donna R. Searcy
Secretary
Federal Communications Commission
Room 222
1919 M Street, NW
Washington, DC 20554

Re: In the Matter of
Amendment of the Commission's
Rules to Establish New Personal
Communications Services
GEN Docket No. 90-314
ET Docket No. 92-100
RM-7140, RM-7175, RM-7617,
RM-7618, RM-7760, RM-7782,
RM-7860, RM-7977, RM-7978,
RM-7979, RM-7980
PP-35 through PP-40, PP-79
through PP-85

Dear Ms. Searcy:

Please find enclosed for filing the original and eleven copies of the joint comments of the National Rural Telecom Association and the Organization for the Protection and Advancement of Small Telephone Companies' comments in the above-captioned proceeding.

Thank you for your assistance in this matter.

Sincerely,

Lisa M. Zaina
General Counsel

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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	)	ET Docket No. 92-100
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JOINT COMMENTS OF THE NATIONAL RURAL TELECOM ASSOCIATION AND THE ORGANIZATION FOR THE PROTECTION AND ADVANCEMENT OF SMALL TELEPHONE COMPANIES

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November 9, 1992

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Summary

The National Rural Telecom Association (NRTA) and the Organization for the Protection and Advancement of Small Telephone Companies (OPASTCO) have long been interested in the development of PCS and its potential for rural America. The Federal Communications Commission's PCS proceeding holds the promise of producing an important set of new mass-market communications services and affordable new radio-based technology to deliver those services.

Because small and rural independent local exchange carriers (LECs) are the communications experts in their communities, they should be allowed both (1) to provide PCS service opportunities for their customers and (2) to incorporate new PCS-driven technology into their networks, just as they have traditionally embraced cost-effective new technologies to meet the challenge of providing high-quality service to high-cost, low traffic volume rural areas.

The FCC has identified four values that it believes should be optimized and balanced in this proceeding: universality, speed of deployment, diversity of services, and competitive delivery. NRTA and OPASTCO believe four aspects of PCS regulation will have the greatest impact on the successful introduction of service to rural America: market structure, service area size, licensing, and regulatory classification.

NRTA and OPASTCO believe the FCC should allocate enough spectrum to license five providers of 2 GHz PCS in each service area. LECs should be eligible for PCS licenses, especially in rural areas, regardless of whether they hold cellular interests. Further, NRTA and OPASTCO believe LEC PCS licensees should receive the same amount of spectrum as non-LEC PCS licensees.

In order to successfully implement PCS, the FCC should create a large number of relatively small markets, preferably using the MSA and RSA boundaries that govern cellular service. NRTA and OPASTCO believe the Commission should allocate and reserve sufficient frequencies through a rural program to allow LECs -- especially small and rural LECs -- to provide PCS within their rural service areas. Integrating PCS with the rapidly evolving LEC intelligent network will make PCS available more economically and to more rural customers by tapping economies of scope. To further speed the deployment of PCS in rural areas, the FCC should use a lottery system to award licenses. NRTA and OPASTCO believe a postcard lottery would help to limit the upfront expense of filing, provided detailed information be required of the winner shortly after the lottery to deter speculative applicants.

Finally, NRTA and OPASTCO believe classifying PCS as a common carrier service correctly reflects its status as a possible competitive substitute to LEC-provided wireline service. Due to the presence of five potential PCS providers in each market, however, any regulation should be light-handed.

Before the
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JOINT COMMENTS OF THE NATIONAL RURAL TELECOM ASSOCIATION AND THE ORGANIZATION FOR THE PROTECTION AND ADVANCEMENT OF SMALL TELEPHONE COMPANIES

Introduction

On August 14, 1992, the Federal Communications Commission (FCC or Commission) released a Notice of Proposed Rulemaking in the above-captioned proceeding.[1] In this eagerly-anticipated NPRM the Commission has proposed a set of regulations to shape the introduction and provision of personal communications services (PCS) for the American public. The National Rural Telecom Association (NRTA) and the Organization for the Protection and Advancement of Small Telephone Companies (OPASTCO) submit these joint comments on the NPRM to support rules and

[1] In the Matter of Amendment of the Commission's Rules to Establish New Personal Communications Services, GEN Docket No. 90-314 and ET Docket No. 92-100, FCC 92-333, Notice of Proposed Rulemaking, 57 FR 40630 (September 4, 1992). (NPRM)

policies that will foster the rapid availability and efficient provision of PCS for rural consumers and businesses.

NRTA and OPASTCO (together the "Rural Associations") are trade associations that represent independent local exchange carriers (LECs) serving primarily rural areas of the United States. The associations represent more than 550 commercial companies and cooperatives serving over 2.6 million customers.

NRTA and OPASTCO have long been interested in the development of PCS and its potential for rural America. OPASTCO responded to the FCC's Notice of Inquiry in this proceeding in late 1990 and early 1991.[2] At the Commission's December 1991 en banc hearing on PCS, Robert Cook of San Marcos Telephone Company testified on behalf of the Rural Telephone Coalition -- NRTA, OPASTCO and the National Telephone Cooperative Association.[3] Additionally, NRTA and OPASTCO have had several ex parte meetings with FCC staff to discuss the importance of PCS to rural America and the role small and rural telephone companies must play in its widespread, efficient development.

The Rural Associations' members are the communications experts in their communities. Their mission is to provide state-of-the-art telecommunications services to their subscribers,

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[2] In the Matter of Amendment of the Commission's Rules to Establish New Personal Communications Services, GEN Docket No. 90-314, RM-7140, RM-7175, Notice of Inquiry, 5 FCC Rcd 3995 (July 1-July 30, 1990). OPASTCO comments, October 1, 1990; OPASTCO reply comments, January 10, 1991.

[3] Statement of Robert D. Cook, En Banc Hearing on Personal Communications Services before the Federal Communications Commission, December 5, 1991.

incorporating such advanced technologies as fiber optics and digital switching. A number of small and rural LECs use radio-based technology in their networks for inter-office transport via microwave links or very remote local loop service via Basic Exchange Telecommunications Radio Service (BETRS). The FCC's PCS proceeding holds the promise of producing an important set of new mass-market communications services and affordable new radio-based technology to deliver those services. Independent LECs should be allowed both (1) to provide PCS service opportunities for their customers and (2) to incorporate new PCS-driven technology into their networks, just as they have traditionally embraced cost-effective new technologies to meet the challenge of providing high quality service to high cost, low traffic volume rural areas.

In its NPRM, the FCC has proposed a set of regulations that it believes will optimize and balance four values it has identified as important to the introduction of PCS: universality, speed of deployment, diversity of services and competitive delivery.[4] In their comments, NRTA and OPASTCO will apply the FCC's criteria to the four aspects of PCS regulation they believe will have the greatest impact on the successful introduction of service to rural America: market structure, service area size, licensing, and regulatory classification.

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[4] NPRM at para. 6.

The FCC Should Allocate Spectrum For Five 2 GHz Licenses In Each Service Area

NRTA and OPASTCO believe the FCC should allocate enough spectrum to license five providers of 2 GHz PCS in each service area. The Rural Associations believe that this market structure will allow the greatest practical number of entities to participate in the provision of PCS, advancing the values of service diversity and competitive delivery. Considering the probable types of companies interested in providing PCS, including cable television companies, cellular companies, LECs, and new PCS entrepreneurs, it appears that allocating enough spectrum to accommodate five licensees will come closest to fulfilling the FCC's stated "most desirable...goal" of accommodating every entity interested in providing PCS services.[5] Granting sufficient licenses will encourage innovation and responsive service offerings that meet the need of particular market segments, as well as widespread availability of service to the general public.

In those areas where demand will support multiple service providers, the FCC can reasonably expect five licensees to produce the high quality, diverse service offerings and reasonable prices that competition delivers. In other areas, it will be the marketplace, and not a restrictive allocation, that determines the "optimum number of potential PCS providers," again

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[5] NPRM at para. 34.

reflecting the Commission's desires.[6]

Of course, in order to provide service successfully and, especially, to stimulate diverse and innovative services, each licensee must have access to a viable block of spectrum. Accordingly, NRTA and OPASTCO recommend that the Commission readjust its frequency reallocation decisions upward, unless future spectrum sharing and spread spectrum decisions determine that viable service is feasible with limited spectrum. The paramount principle, however, must be that each licensed provider receives a viable block of spectrum with which to provide high quality, reliable services.

LECs Should Be Encouraged to Provide PCS Service, Especially in Rural Areas

NRTA and OPASTCO believe that LECs should be eligible for PCS licenses to pursue the Commission values of universality and speed of deployment. LEC eligibility is particularly important to implement these values for rural areas. The Commission itself has recognized that "there is a strong case for allowing LECs to provide PCS within their respective service areas" and that there should be no restriction outside their service areas.[7]

The LECs possess experience in the provision of telecommunications services, familiarity with the conditions and needs of the areas and customers they serve and a tradition of

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[6] Ibid.

[7] NPRM at paras. 75 and 77, n. 52.

providing service to all customers. Moreover, granting LECs the opportunity to provide PCS will allow them to use whatever technology is most cost effective to serve their customers,[8] furthering the goal of universality in both traditional telephone service and new PCS services. Alternative ways of providing service are particularly important in the high cost rural areas.

Integration of PCS technology with the rapidly evolving LEC signalling capabilities and increasing network intelligence would make PCS more economically available, earlier, and to more rural customers. Integration would also help increase the use and, consequently, the efficiency of the LEC provided public switched network. Only a decision which makes the LECs eligible for PCS licenses will provide rural areas a meaningful opportunity to receive high quality, widely available PCS services.

The Commission Should Not Bar LECs With Cellular Interests From Providing PCS

There has been some suggestion that having cellular holdings should make an entity ineligible for a PCS license. The

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[8] For example, some small and rural LECs use Basic Exchange Telephone Radio Service (BETRS) to provide local exchange service to customers who would be extremely costly and difficult to serve with the more traditional wireline technology. Although BETRS has brought service to some who might otherwise not have service at all, it remains a costly technology with limited applications. BETRs and PCS represent two different concepts and technologies. PCS could provide opportunities for new and improved service, as well as potentially more cost -- effective delivery of telephone services to remote areas. In addition, since PCS technology is likely to be introduced for the mass market, there is the real potential that equipment costs for rural service would share in the benefits of resulting cost reductions and technologies innovations.

underlying assumption that the two services are virtually identical is erroneous, so the Rural Associations believe that a LEC's cellular holdings should not disqualify LECs from eligibility. For one thing, PCS differs from cellular service in a decisionaly significant way -- PCS is basically local exchange service with a different technology. PCS could significantly improve the technological arsenal for providing rural telephone service, whereas cellular technology has been designed and implemented primarily for use in vehicles. Moreover, cellular development has been targeted to highway and traffic-related locations because it is a mobile service developed for automobile use.

The assumption that LECs with cellular interests already have spectrum to provide PCS in their service areas is also incorrect. The involvement of many small and rural LECs in cellular partnership is limited to owning minority partnership interests. They have no authority to decide to use cellular frequencies to provide PCS -- or even cellular service -- in their service areas. Moreover, LECs with cellular interests should not be subjected to restrictions not applicable to other communications providers, such as cable television systems, SMR providers and others that seek to extend the range of services they provide to customers to include PCS.

Particularly for rural Americans, a ban on LECs with cellular interests could translate to loss of the opportunity to obtain PCS. Thus, disqualification of LECs from provision of PCS

because of cellular interests would be ill-advised, contrary to the public interest and wholly at odds with the FCC's goal of universality.

LECs Should Have the Same Frequency Allocation to Provide PCS as Other Licenses

It is also important that the FCC grant LECs the same size block of spectrum it grants to other providers. The FCC should not discriminate against the LEC because it has other means of providing non-mobile service in its area. The spectrum allocation for LECs must be large enough to allow the LEC to use the new technology to its fullest extent in order to provide its customers with the full range of diverse services. Particularly in rural areas, where LECs are likely to be the most rapid -- and perhaps the only -- source of PCS for many consumers, handicapping LECs by providing them with less spectrum would handicap customers without alternative PCS choices, by constraining the range and flexibility of services available to them.

The Commission Should License Small PCS Service Areas

The FCC has asked for comment on the appropriate size of PCS service areas. It has proposed four alternatives: the 487 "Basic Trading Areas" defined by Rand McNally, the 47 "Major Trading Areas" also defined by Rand McNally, the 194 telephone LATAs and

nationwide licenses.[9] In addition, the Commission has tentatively concluded that PCS service areas should be larger than the 734 cellular service areas -- 306 Metropolitan Statistical Areas (MSAs) and 428 Rural Service Areas (RSAs)--[10] pointing to the cellular industry's recent consolidation. The Commission estimates that such post-licensing consolidation may have incurred an industry-wide transaction cost of over $1 Billion. It also suggests that the large number of initial licenses may have unnecessarily delayed the assignment process by several years.[11]

Since the Rural Associations do not regard cellular and PCS service as equivalent, NRTA and OPASTCO disagree with the FCC's assumption that PCS will exhibit the same economies of scale found in the cellular industry.[12] To start with an obvious technical difference, micro-cellular and cellular technologies involve different cell sizes and geographic coverage patterns. While cellular cells had to be designed to be sufficiently large to cover major highway segments, PCS cells will be much smaller, giving the FCC leeway to license service areas as small as the public interest requires. As Commissioner Quello correctly pointed out in his separate statement, released August 14, 1992, smaller license areas are more appropriate for low-power micro-

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[9] NPRM at para. 60.

[10] NPRM at para. 60.

[11] NPRM at para. 57.

[12] NPRM at para 58.

cell systems designed for use by pedestrians. In fact, the Rural Associations believe there are many benefits to making the PCS service areas as small as possible, which will contribute to diversity of service, universability and speed of deployment. Accordingly, NRTA and OPASTCO recommend that the Commission use the 734 MSAs and RSAs developed for cellular licensing for PCS service areas.

The Rural Associations agree with the Commission's view that smaller service areas will allow a large number of entities to provide service. Smaller service areas, requiring more limited investment, will allow many more providers to be licensed, drawn from a much larger and more diverse pool of financially qualified applicants. As the Commission states:

> Some potential PCS licensees may be interested in serving only their local areas, including smaller communities that are less economic to serve. This approach may minimize certain transaction costs associated with having larger areas, such as subcontracting with other companies to provide service in these smaller cities and communities.[13]

NRTA and OPASTCO agree. Small service areas will help deliver service at a better price to rural areas because rural service providers will not have to pay the price of acquiring rural service territory in the "aftermarket" from a large licensee with power to extract profits by selling government conferred spectrum. Beyond that, small LECs would have difficulty

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[13] NPRM at para. 59.

competing in the "aftermarket" for spectrum licensed in large geographical areas.

Another benefit of small service areas is that PCS is far more likely to be introduced as quickly as possible across the nation, in rural communities as well as large urban areas, with many licensees serving relatively homogeneous territories. A company holding a nationwide PCS license would introduce service first in the more densely populated urban centers, where its newly-constructed facilities could attract the largest number of potential customers. A company holding an RSA license, however, will have a strong incentive to introduce service to its small town or rural market, simply because that market presents the principal business opportunity. The potential customers in its RSA are the focal point of its operations and will not be neglected in favor of service to more densely populated urban areas.

Only service areas no larger than RSAs and MSAs assure the proper level of attention to the needs of customers outside densely populated areas. Every Major Trading Area or Basic Trading Area has at least one major metropolitan core, which would inevitably provide the central focus for a licensee awarded a service area based on those designations. A nationwide license would obviously multiply the number of urban areas that would receive the most immediate attention and development while lower priority rural communities waited for service.

Smaller service areas will also better satisfy the Communications Act standard for licensing and allocating frequencies. Section 307(b) directs the FCC to make such distribution of licenses and frequencies "among the several states and communities as to provide a fair, efficient and equitable distribution of radio service to each of the same." Granting licenses for large service areas would spell neglect and delay in obtaining the benefits of PCS for smaller communities. In contrast, small service areas will give smaller communities access to their own licenses through FCC action, as the Act intends, rather than as afterthoughts in large scale systems or by relinquishing the right to decide what communities may have systems to private transactions.

Companies specializing in rural service have a deeper knowledge of their markets. Thus, these companies are experts in serving their customers. With their knowledge they will be able to offer communications services that are specifically designed to meet the needs of the communities that they serve. Clearly, they are the most likely to bring these services to their communities.

Small and rural LECs have long demonstrated their commitment to serving their service areas through aggressive network modernization. Indeed, these companies have often been on the leading edge of technology. For example, they have converted to digital switching more quickly than larger companies have upgraded their facilities in comparable rural service

territories. A large majority of small and rural LECs have installed digital switches. Approximately 73% of the switches used by the National Exchange Carrier Association (NECA) pool participants are now digital. Many small and rural LECs are also incorporating optical fiber into their networks. Small and rural LECs are also making arrangements to participate in SS7 networks and thereby to obtain the capabilities that advanced signalling can support. SS7 capabilities can economically provide the network intelligence to make PCS work as a nationwide, interconnected system of personalized, geographically-unlimited communications access.

The Commission Should Allocate and Reserve Frequencies for PCS Development by LECs in Rural Areas

The Rural Associations believe that the Commission should allocate and reserve sufficient frequencies through a rural program to allow LECs -- especially small and rural LECs -- to provide PCS within their rural services areas and to provide wireless telephone loops. Integrating PCS with the rapidly evolving LEC signalling capabilities and increasing network intelligence of the public switched network will make PCS available more economically and to more rural customers by tapping economies of scope.

The public interest requires that all areas of the nation and all potential customers have a reasonable opportunity to obtain this next generation of services, as the FCC's universality criterion recognizes. Rural areas, in particular,

need to keep pace with the telecommunications infrastructure development made possible by technological advances. It is also imperative to maintain the health and affordability of the public switched network, so customers without alternatives will not face higher rates and diminished service quality. Assuring that rural LECs can provide PCS will give them access to revenues that will help offset the loss of traffic to the competing PCS networks the Commission seeks to encourage. Maintaining revenue streams is necessary to prevent remaining customers from having to absorb the network costs "left behind" by customers diverted to mobile services competing with traditional local exchange and access service.

Reserving one of the five equal blocks of spectrum for service by small and rural LECs would help to establish PCS as rapidly as possible in areas that furnish less economic incentive for early, widespread PCS development. The availability of four other licenses will assure that competition can develop rapidly, starting with the most urban markets, where competition generally becomes established first. The FCC should award the license for a geographic area equivalent to the other four licenses, but with the requirement that each LEC would provide the PCS service in its own local exchange service area.

PCS may radically change the way telecommunications service is provided, for example, by substituting portable telephone numbers assigned to people rather than locations. However, from the perspective of the average customer, the new environment will

simply represent another step in the evolution of telephone technology. Customers have come to expect the public switched network -- a recognized world leader and national resource -- to be allowed to evolve technologically and meet LEC customers' demand for new services. Rural LECs will be at a severe and crippling disadvantage if they cannot provide the services they have always provided using the most modern, cost-effective and flexible technology available. And, from the all-important public interest perspective, it is clear that rural LECs' ability to continue to fulfill their universal service and carrier of last resort obligations must not be compromised by withholding access to the frequencies they will need to remain competitive (or even viable) in an environment of increased competition and new technological capabilities.

The Commission Should Employ Lotteries To Award Licenses

The Commission should choose lotteries over comparative hearings to award PCS licenses because lotteries will allow more rapid establishment of service and conserve government resources. To discourage unqualified applicants and protect the public interest in assuring licensees with adequate financial resources that seriously intend to construct and operate the systems for which they seek licenses, the FCC should establish financial and technical qualifications, require timely construction and operation of licensed systems and explore other ways to discourage speculative applications. For example, the Rural

Associations believe it would be reasonable to require that applicants have some experience in telecommunications or a related field, a requirement which would have significantly diminished the applications for cellular authority by parties whose real interest was in acquiring a license to sell.

A postcard lottery would help to limit the upfront expense of filing. However, detailed information should be required shortly after the lottery, again to discourage applicants that do not intend to construct and operate PCS systems.

The Rural Associations oppose the use of auctions to award PCS licenses, even if Congress should authorize the Commission to use that licensing method. Small and rural LECs and other entities with hands-on expertise and commitment to serving rural America do not have the financial resources to compete against large companies in competitive bidding, and would be excluded. This exclusionary effect would be even more pronounced to the extent that auctions and large license areas were combined. Like the "aftermarket" theory of subdividing large markets through transactions, auctions would likely impose initial costs on winning bidders which would, in turn, raise the cost of PCS service to the public.

The Commission Should Classify All PCS As Common Carrier Service, But Regulate It Lightly

The FCC has raised questions about whether to classify PCS as common carrier or private service. The Commission recognizes, (¶ 71) that "over time PCS may become a full-fledged competitor

to wireline services." And it expects PCS to be a "complement to LEC-provided wire loops..." from the outset.[14]

Since PCS is likely to become a competitive substitute for local exchange telephone service, its regulatory classification and treatment raise sensitive issues regarding universal service and competitive fairness. LECs serve under common carrier obligations that have been instrumental in bringing the goal of universal service close to achievement in this country. Diversion of customers to competing PCS systems could disrupt the ability of LECs to meet their obligations, particularly if the competing PCS service provider has the substantial artificial advantage of wholly eluding regulation through a strained classification of PCS as private carriage. Providers of similar services should, at the very least, be classified in the same way.[15]

The extent to which PCs will replace wireline service cannot be predicted yet. However, many believe that PCS will make significant inroads. The Commission should not relinquish its authority to regulate PCS as necessary in the future by applying a distorted interpretation of "private" service. "Private" classification would also improperly rob the states of their rightful authority over intrastate communications. The "common carrier" classification need not carry heavy-handed regulation,

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[14] Ibid.

[15] Other services in the PCS "family," such as wireless PBXs, that are not potential substitutes for local exchange and access services, should be classified as they are developed.

but does maintain full statutory powers for the FCC to protect the public as necessary.

PCS will also compete with some uses of cellular service. Cellular providers are classified as common carriers. While cellular systems are less regulated than LECs, they are subject to certain requirements and remedies imposed on common carriers. PCS and cellular providers should also be treated the same to prevent competitive distortion.

Common carrier classification will assure that PCS achieves its potential to improve emergency services such as 911 and communications following disasters such as hurricanes or other blows to land-line communications. It will also fairly require PCS providers to provide the same access for persons with hearing and speech impairments as LECs, cellular providers and all other common carriers subject to Section 225 of the Communications Act.

Light-handed common carrier regulation is appropriate because there will be five potential PCS competitors in each market. The Commission has increasingly relied on such structural discipline to replace intensive day-to-day regulatory interference.

Conclusion

The FCC can best balance the four values it has identified in this proceeding by adopting the market structure and policies proposed by the Rural Associations. To promote "universality" and "speed of deployment," particularly in rural areas, the

Commission should rule that LECs are eligible to provide PCS both within and outside their service areas, reserve spectrum for LEC-provided PCS in rural areas, including the use of radio technology for wireless loops, and refrain from restricting LECs from providing PCS because of their cellular holdings. To promote "diversity of services," "competitive delivery," and "speed of deployment" nationwide, the FCC should allocate spectrum for five 2 GHz PCS licenses in a large number of relatively small markets, preferably using the MSA and RSA boundaries that govern cellular service. To speed deployment and minimize regulatory costs, it should use lotteries to select licenses.

Finally, to preserve the authority necessary to protect the public interest and to prevent the unfair competitive advantage of differential regulation, without unduly burdening the nascent

PCS industry, the Commission should classify 2 GHz PCS providers as common carriers, but avoid heavy-handed regulation.

Respectfully submitted,

NATIONAL RURAL TELECOM ASSOCIATION

By: Margot Smiley Humphrey
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November 9, 1992

CERTIFICATE OF SERVICE

I, Matthew L. Dosch, hereby certify that a copy of the joint comments of NRTA and OPASTCO was sent on this, the 9th day of November, 1992, by first class United States mail, postage prepaid, to those listed below.

Matthew L. Dosch

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